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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,863	06/01/2001	Randolph H. Watkins	DI-5717	1448

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13
EXAMINER

MENON, KRISHNAN S

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 06/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/871,863

Applicant(s)

WATKINS ET AL.

Examiner

Krishnan S Menon

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claims 1 and 3-28 are pending.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 3435883 A1.

DE '883 teaches a dialyzer inlet header comprising a body (fig 1 and 2), inlet channel providing fluid communication (28) to the interior of the dialyzer and defining a flow path axial to the fiber bundle, one member modifying the fluid flow (fig 2) as it exits the inlet channel as in instant claim(s), and the member includes a curved vane extending from the body as in claim 1. The additional element in Independent claim 21: body member having plurality of members imparting a circular motion is item 50 of fig 2. Independent claim 12 is for a dialyzer having the following elements in addition to that of claim 1: body with first and second end (see figures: only one end shown), fiber bundle (20), blood inlet (28), and the member (fig 2) is integral and in juxtaposition to the blood inlet causing blood to flow to the perimeter.

Re the member including curved vanes being extending from or integral with the body: "...the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice" (*In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)).

DE '883 teaches additional elements of the dependent claims as follows: Curved vanes (50) and curved channels as in instant claim(s) 6, 10, 11, 13, 16, 18, 19, 22 and 23. Eight vanes and eight channels as in instant claim(s) 3,7, 27 and 28. Inlet channel is located at a center of the body (see fig 1) as in instant claim(s) 4, 14 and 26. Header (blood inlet) is sealed to an end of the dialyzer (see fig

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1) as in instant claim(s) 5 and 15. Member includes a disk (46) that obstructs the flow as it exits into portions of the interior of the header as in instant claim(s) 8 and 24. The disc that obstructs the flow is located under the exit opening of the inlet channel as in instant claim(s) 9, 17 and 25. The dialyzate inlet and outlet fluid flow channels are radial to the fiber bundle as in instant claim(s) 20 (see fig 1, 2).

Response to Arguments

Applicant's arguments filed 3/9/03 have been fully considered but they are not persuasive.

Argument re improved header design giving improved flow: need to show supporting evidence that there is an unexpected substantial improvement over the prior art. Re "... the fluid flow path modifying member that extends from and/or is integral to a body..", see the rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S Menon whose telephone number is 703-305-5999. The examiner can normally be reached on 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Krishnan Menon
Patent Examiner
June 17, 2003


W. L. WALKER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700